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Type of Paper transmitted: **RESPONSE TO RESTRICTION REQUIREMENT**

Applicant's Name: Andrew S. Pekosz

Serial No. (Control No.): 10/700,239 Examiner: Franco M. SALVOZA

Filing Date November 3, 2003 Art Unit: 1648

Application Title: **METHODS AND COMPOSITIONS FOR DETECTION OF  
SEGMENTED NEGATIVE STRAND RNA VIRUSES**

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/700,239

Examiner: Salvoza, M Franco G

Applicant: Andrew S. Pekosz

Group Art Unit: 1648

Filed: November 3, 2003

Confirmation No.: 3764

Docket No.: 60005161-0114

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## RESPONSE TO RESTRICTION REQUIREMENT

Sir:

The present paper responds to the Restriction Requirement mailed August 1, 2006. The present application was previously subjected to a Restriction Requirement in a paper mailed January 26, 2005. New claims were submitted in the Response to this Restriction Requirement. As a result, claims 1-25 and 95-98 are presently under consideration.

In response to the Restriction Requirement mailed August 1, 2006, Applicant elects, with traverse, the methods of claims 1 and 10 wherein the cell lacks at least one nucleocapsid protein selected from the group consisting of PA PB1, PB2, and NP. Applicant further elects with traverse protein PA as a species election, as required by the PTO.

Applicant requests reconsideration and withdrawal of the Restriction Requirement, because the PTO has not established proper grounds for restriction.

To support a requirement for restriction between combination and subcombination inventions, two-way distinctiveness and reasons for insisting on a restriction are necessary, i.e., there would be a serious burden as evidenced by separate classification, status, or field of search. MPEP §806.05(c). In the present Restriction Requirement, the PTO provides no evidence of

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separate classification, status, or field of search, and hence provides no reasons for insisting on restriction.

In addition, the PTO attempts to support the restriction by stating that "the subcombination or (*sic, of*) each of the nucleocapsid proteins has a separate utility as structurally independent and distinct components of the influenza protein polymerase complex." The PTO further asserts that "The nucleocapsid protein species are related as subcombinations disclosed as usable together in a single combination." However, the claims under consideration refer to, inter alia, cells which lack at least one or all nucleocapsid proteins. Thus, the PTO's assertion that these proteins have utility in a single combination is simply of no consequence to the scope of the claims under examination.

Accordingly, the PTO has not met its burden for supporting a restriction, and Applicant respectfully requests withdrawal of the Restriction Requirement.

In the Restriction Requirement, the PTO requires identification of claims encompassing the elected invention. In this case, Applicant elects claims directed to methods utilizing cells lacking protein PA. Applicant suggests that all of the claims encompass methods which can utilize cells lacking protein PA.

#### CONCLUSION

As it is believed the application is in a condition for allowance, prompt and favorable consideration of this application or Notice of Allowance is respectfully requested. Applicant believes that there no fee due at this time. If this is determined to be inaccurate, any deficiency may be charged to Deposit Account No. 19-3140. The Examiner is invited to contact the undersigned attorney to discuss this application at the telephone number provided below.

Respectfully submitted,

  
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